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INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS,  
ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA

April 12, 2017

**VIA NLRB E-FILE**

Angelica Blanco  
Board Agent  
National Labor Relations Board, Region 31  
11500 W Olympic Blvd., Ste. 600  
Los Angeles, CA 90064-1753

**RE: *International Alliance of Theatrical Stage Employees; International Alliance of Theatrical Stage Employees, Local 871; Radical Media, LLC; and Biscuit Filmworks, LLC***  
**NLRB Case Nos. 31-CB-192722,  
31-CB-192727,  
31-CB-192754, and  
31-CB-192761**

Dear Ms. Blanco,

On or about February 8, 2017, Biscuit Filmworks, LLC, and Radical Media, LLC (collectively the "Employer") filed unfair labor practice charges against the International Alliance of Theatrical Stage Employees ("IATSE") and IATSE Local 871 ("Local 871") (collectively the "Union"). The charges allege that the IATSE and Local 871 have engaged in bad faith bargaining, in violation of Section 8(b)(3) of the Act. Specifically, the Employer alleges that the IATSE and Local 871 failed to provide certain information requested by the Employer via letter dated July 22, 2016. You have asked the Union to respond to these charges. The IATSE and Local 871 categorically deny the allegations in the unfair labor practice charges and, for the reasons discussed below, request that they be dismissed.

On July 22, 2016, the Employer sent a Request for Information to the Union ("RFI"). The RFI is attached hereto as **Exhibit A**. The Employer's RFI stemmed from a contractual dispute between the parties over whether certain of the Employer's employees are performing duties which fall within the scope of the

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Employer's collective bargaining agreement with the Union. The RFI contained 28 distinct requests.

The Union promptly responded to the Employer's RFI by letter dated August 4, 2016.<sup>1</sup> The Union's response is attached hereto as **Exhibit B**. The letter was drafted by then IATSE West Coast Counsel Andrew Kahn. The Union provided a response to each of the 28 distinct request for information, in some cases providing the requested information, in some cases stating objections, and in other cases asking clarifying questions. To date, the Employer has never responded to the Union's response to its RFI. The Employer has made no effort to follow up on the Union's questions, or engage in any bargaining regarding the method and means of production of certain information it requested from the Union. Instead, the Employer sat on the Union's response for six months, and then filed the instant unfair labor practice charges.

In your letter, you state that the Employer alleges the Union has failed to provide information in response to the following requests in its RFI: 1, 2, 3, 4, 5, 6, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, and 28. The Union will address each of these requests in turn.

#### Requests 1, 2, 3, and 14

In Request 1, the Employer asked the Union to "Identify by date/location/product/service/client each commercial production on which the potential witness was employed and identify which job title the potential witness used on the production." The Union responded that it was unable to provide any additional information in response to this request beyond what it had already provided to the Employer by way of witness statements. Additionally, the Union objected to the

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<sup>1</sup> The Union, of course, recognizes that it has a duty, subject to certain limitations, to provide an employer with information that is in its possession, which is relevant to the administration or negotiation of a collective bargaining agreement, upon request. *California Nurses Ass'n*, 326 NLRB 1362 (1998).



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request on the grounds that the requested information was already in the possession of the Employer – in other words, the Employer had the names of the Union’s witnesses and could easily search its own records to determine which commercial productions the witnesses had worked on. The Union also objected to the overly-broad temporal scope of the request in light of the fact that the Union was not seeking back pay for work performed prior to 2014. The Union also objected that the request sought more information than is customarily requested prior to a grievance hearing.<sup>2</sup> The Union’s full response can be seen on pp. 1-2 of Exhibit B.

Despite its objections, and in a good faith effort to attempt to respond to the request for information, the Union offered to review information in the Employer’s possession which would facilitate a response to the RFI. In other words, the Union asked the Employer to provide it with access to the Employer’s records so it could compile the “date/location/ product/service/client each commercial production on which the potential witness was employed and identify which job title the potential witness used on the production”.<sup>3</sup> If, at the conclusion of the review of the Employer’s records, the Union was not able to fully respond to the request, the Union offered to then interview the witness for information responsive to the request. But, clearly, the best evidence is contained in the Employer’s own records.<sup>4</sup> Moreover, the Union offered to interview its witnesses once it had reviewed the

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<sup>2</sup> Although the standard for relevancy is a “liberal discovery-type standard,” the Board has held that there is “no general right to pretrial discovery in arbitration proceedings,” *California Nurses Association*, 326 NLRB 1362 (1998), [citing, *Tool & Die Maker's Lodge 78 (Square D Co.)*, 224 NLRB 111, 112 (1976); *Cook Paint & Varnish Co.*, 246 NLRB 646 (1979), enf. denied on other grounds, 648 F.2d 712 (D.C. Cir. 1981)].

<sup>3</sup> The duty to disclose information does not require a party to gather information that it does not already possess. *Korn Indus., Inc. v. NLRB*, 389 F.2d 117 (4th Cir. 1967).

<sup>4</sup> Where information is outside of its direct control, a responding party may satisfy its obligations under the Act by making a good faith effort to obtain the information. *Pittson Coal Group, Inc.*, 334 NLRB 690 (2001)

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Employer's records so that those records could be used to refresh the recollection of the witnesses. **The Employer never responded to this offer.**

Requests 2, 3, and 14 were derivative of Request 1, in that they asked the Union to use the list of commercial productions compiled in Request 1 to obtain further information from its witnesses. The Union again offered to review the Employer's own records to facilitate a response to these Requests, and to follow up with its witnesses should such a search fail to produce a response. Again, **the Employer never responded to this offer.**

In conclusion, the Union responded to these requests by stating several objections to the scope and nature of the requests. Nevertheless, and in an effort to bargain in good faith with the Employer, the Union offered to search the Employer's own records to compile the requested information. Importantly, the Union has never refused to provide the requested information. It has simply sought to negotiate with the Employer regarding how the information is compiled. Unfortunately, the Employer never bothered to even respond to this offer, instead choosing to file the instant ULPs.

#### Requests 4, 5, and 6

Request 4 asked the Union to "identify the names of all employees interviewed by IATSE and/or Local 871 or their agents or representatives." Request 5 asked the Union to identify the names of witnesses who submitted anonymous witness statements. And Request 6 asked the Union to "provide a copy of any and all 'witness statements' obtained from any employee of any of the companies that are signatory to" the parties' collective bargaining agreement.

The Union objected to all three of these Requests on the grounds that the "requested information is privileged by the NLRA, the California state constitutional right of privacy and the federal constitutional freedom of association." Workers in the commercial production industry work on a freelance basis, for short periods of



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time (the production of a commercial is usually completed over a matter of days). The nature of the business lends itself to blackballing, and workers are naturally reticent to expose themselves to retaliation for engaging in protected activities (like talking to their Union). The Union further objected that Request 4 was “wildly-overbroad by not being limited to employees who would have information probative about these grievances (it says ‘employees’ which could include employees working as grips for movie producers who have no information probative of these grievances).”<sup>5</sup> Finally, the Union objected to Request 6 on the grounds that it sought information protected by the attorney work product doctrine.

Despite its objections, and like its response to Requests 1-3 and 14, the Union nonetheless made an effort to negotiate with the Employer over production of the information. The Union offered to provide the names of the witnesses if they were provided pursuant to a protective order from the arbitrator who would hear the underlying grievance.<sup>6</sup> The Union also offered to provide a list of witnesses if the Employer also agreed to provide its own list of witnesses and stipulated not to use the identities of the witnesses for any purpose except for the hearing on the grievance. **The Employer never responded to these reasonable offers.**

In conclusion, the Union responded to these requests by asserting several reasonable objections. Nevertheless, and in an effort to bargain in good faith with the Employer, it offered to provide the information to the Employer under conditions which would protect its member-witnesses from retaliation. Importantly, the Union has never refused to provide the requested information, it has simply sought to bargain with the Employer regarding how the information is produced so as to

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<sup>5</sup> Information that does not directly relate to bargaining unit members is not presumptively relevant. *NLRB v. Wachter Constr., Inc.*, 23 F.3d 1378 (8th Cir. 1994).

<sup>6</sup> A responding party is entitled to assert confidentiality concerns provided it does so in a timely manner and seeks an accommodation from the other party. *Piedmont Gardens*, 362 NLRB No. 139, pp. 4-6 (2015).

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protect its members. Unfortunately, the Employer never bothered to respond to the Union's offer, instead choosing to file the instant ULPs.

Requests 10, 13, and 17-28

The Union provided information to the Employer in response to Requests 10, 13, and 17-28, and it is therefore puzzling that the Employer has included these Requests in its charge.

Request 10 asked the Union to "provide copies of any prior job descriptions or prior versions of job descriptions for any of the positions that IASE [sic] and/or Local 871 contends is at issue in this case and the date on which each of the job description was first created." The Union responded by attaching the prior version of the job description, and asking a clarifying question to which the Employer never responded. To date, the Employer has never followed-up to state any sort of objection to this response.

Request 13 asked the Union to provide "the date that each potential witness summary [sic] statement was first given, drafted or communicated to any representative of Local 871 and/or IATSE and the means of such communication." The Union responded that it did not know any of these dates, other than those dates which were shown on the face of the witness statements. The Union also objected that the dates were not relevant to the underlying grievance, but offered to perform a further search if the Employer objected. To date, the Employer has never followed-up to state any sort of objection to this response or to provide clarification.

Request 17 asked the Union to "identify which position among Production Office Coordinators, Production Accountants, Art Department Coordinators, Assistant Production Office Coordinators, or Assistant Accountants corresponds to the position Production Supervisor." The Union responded that the "position PS is equivalent to POC. PS on occasion do work that is also done by Production Accountants, but traditional POC/APOC work often includes such accountant-type work." To date, the Employer has never followed-up to state any sort of objection to this response.



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Request 18 asked the Union to “identify which position among Production Office Coordinators, Production Accountants, Art Department Coordinators, Assistant Production Office Coordinators, or Assistant Accountants corresponds to the position Commercial Coordinator.” The Union responded that the “position CC corresponds to POC or APOC, depending on the company and production.” To date, the Employer has never followed-up to state any sort of objection to this response.

Request 19 asked the Union to “identify which position among Production Office Coordinators, Production Accountants, Art Department Coordinators, Assistant Production Office Coordinators, or Assistant Accountants corresponds to the position Production Manager.” The Union responded that the “position PM is typically equivalent to POC except in the rare occasions when the PM functions like a UPM under the DGA contract. PM on occasion do work that is also done by Production Accountants, but traditional POC work often includes such accountant-type work.” To date, the Employer has never followed-up to state any sort of objection to this response.

Request 20 asked the Union to “identify which position among Production Office Coordinators, Production Accountants, Art Department Coordinators, Assistant Production Office Coordinators, or Assistant Accountants corresponds to the position Production Coordinator.” The Union responded that the “position PC corresponds to POC or APOC, depending on the company and production.” To date, the Employer has never followed-up to state any sort of objection to this response.

Request 21 asked the Union to “identify which position among Production Office Coordinators, Production Accountants, Art Department Coordinators, Assistant Production Office Coordinators, or Assistant Accountants corresponds to the position Assistant Production Coordinator.” The Union responded that the “position APC is equivalent to APOC.” To date, the Employer has never followed-up to state any sort of objection to this response.

Request 22 asked the Union to “identify which position among Production Office Coordinators, Production Accountants, Art Department Coordinators,

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Assistant Production Office Coordinators, or Assistant Accountants corresponds to the position Assistant Production Supervisor.” The Union responded that the “position APS is equivalent to APOC.” To date, the Employer has never followed-up to state any sort of objection to this response.

Request 23 asked the Union to “identify which position among Production Office Coordinators, Production Accountants, Art Department Coordinators, Assistant Production Office Coordinators, or Assistant Accountants corresponds to the position Assistant Production Manager.” The Union responded that the “position APM is equivalent to APOC except in the rare instance where the Production Manager functions like a UPM under the DGA contract, in which case the APM functions more like a POC than an APOC.” To date, the Employer has never followed-up to state any sort of objection to this response.

Request 24 asked the Union to “identify which position among Production Office Coordinators, Production Accountants, Art Department Coordinators, Assistant Production Office Coordinators, or Assistant Accountants corresponds to any other position claimed by IATSE under the CPA.” The Union responded that it was “unaware of any overlap between the named positions and other IA-represented positions (unless one is talking about very basic common tasks like using a phone and computer, which many job classes share).” To date, the Employer has never followed-up to state any sort of objection to this response.

Request 25 asked the Union to “explain the relevance of any Production Guidelines to establishing coverage of any of the positions claimed by IATSE under the CPA.” The Union responded that the “Production Guidelines set forth the duties of the production office in commercials, which shows those to be duties equivalent to production offices in motion pictures/TV. It is also possible that such guidelines specifically identify which person or job class in this office does which duties, further confirming that they are performing the same work as traditional POC/APOC work in motion pictures/TV.” To date, the Employer has never followed-up to state any sort of objection to this response.



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Request 26 asked the Union to “explain the relevance of any Production Office Checklist to establishing coverage of any of the positions claimed by IATSE under the CPA.” The Union responded that the “Production Office Checklists set forth the duties of the production office in commercials, which shows those to be duties equivalent to production offices in motion pictures/TV. It is also possible that such checklists specifically identify which person or job class in this office does which duties, further confirming that they are performing the same work as traditional POC/APOC work in motion pictures/TV.” To date, the Employer has never followed-up to state any sort of objection to this response.

Request 27 asked the Union to “explain the differences in the manner in which Production Office Coordinators, Production Accountants, Assistant Production Office Coordinators and/or Assistant Accountants are utilized by the companies who are the subject to [sic] the grievances that have been filed and the manner in which Production Office Coordinators, Production Accountants, Assistant Production Office Coordinators and/or Assistant Accountants are utilized by any other CPA signatory companies.” The Union responded that it could not recall any such differences. To date, the Employer has never followed-up to state any sort of objection to this response.

Request 28 asked the Union to “provide copies of all written communications including emails between any representative of Local 871 and any representative of the Companies or representative of the Association of Independent Commercial Producers, Inc. in which the claims or issues asserted in the Grievance were mentioned or described or similar matters, whether referring to the companies or any other AICP member company.” The Union responded that it was unaware of any such communications other than that contained in an RFI it sent to the Employer in September 2015, the correspondence between Employer’s Counsel and Counsel for the IATSE, and internal Union communications which were cc’d to Employer’s Counsel. To date, the Employer has never followed-up to state any sort of objection to this response.

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It is not clear what basis the Employer has to allege that the Union has failed to provide information in response to these Requests in that the Union **has** responded and provided information, and the Employer has never followed-up on that response to state an objection, or clarify its request in light of the Union's response in any way.

Request 15

Request 15 states as follows: "With respect to each of the 11 bullet pointed tasks contained in each of the witness statements previously provided for (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), 'Witness #4' and 'Witness #5', identify by date/title/production entity name/ each feature film or television production on which each of them allegedly performed each such bullet pointed tasks." The Union responded that it had no further information other than that which had already been provided to the Employer in the witness statements. The Union also objected that the requested information was not relevant to the underlying grievance. Nevertheless, the Union offered to discuss this request with its witnesses to see if they had any responsive information. To date, the Employer has never followed-up to state any sort of objection to this response.

Request 16

Request 16 asks the Union to "[p]rovide the date on which each of the grievated companies changed manner [sic] in which it utilizes Production Office Coordinators, Production Accountants, Assistant Production Office Coordinators, and/or Assistant Accountants." The Union responded that it was unable to provide those dates because it has "been precluded from communication with your production office staff by virtue of their private work location and your illegal refusal to provide us any names or contact info. Once this illegality is cured we will endeavor to provide you detailed information for each company." The Union filed an unfair labor practice charge against the Employer based on the refusal identified in its response to this Request. Those ULPs have gone to Complaint, and are set for hearing next month (Cases 31-CA-175156; 31-CA-174138).



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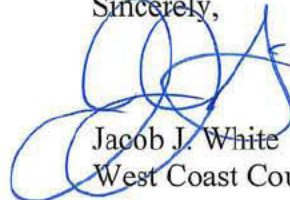
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### Conclusion

The length of the documents involved, including this letter, belie the simplicity of this matter. The Employer submitted an RFI to the Union on July 22, 2016. The Union promptly responded to the RFI on August 4, 2016. In its response, the Union provided some information, objected to some of the requests and, for the requests which raised objections, made reasonable offers to work with the Employer to come to an understanding which would permit the Union to provide further information. The Employer never respond to the Union's response, or its request to bargain on further responses. Instead, the Employer sat on the Union's response for six months, and then filed the instant unfair labor practice charges. Simply put, there is no evidence of bad faith on the part of the Union in this case. The Union has never refused to provide information. To the contrary, the Union promptly responded to the Employer's request for information by providing information and seeking ways to provide further information. The Employer was simply uninterested in pursuing the matter further. In other words, the Employer has shown an unwillingness to engage in good faith negotiations with the Union to facilitate production of additional information in response to its RFI.

For the reasons stated above, the Union respectfully requests that the Employer's unfair labor practice charges be dismissed forthwith.

Sincerely,



Jacob J. White  
West Coast Counsel

JJW/ (b) (6)

Attachments

cc: Leslie Simon, Business Agent, IATSE Local 871